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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,720	11/14/2001	Laurent P. Daynes	004-7347	5887

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EXAMINER

LE, UYEN T

ART UNIT PAPER NUMBER

2171

DATE MAILED: 05/07/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/992,720

Applicant(s)

DAYNES, LAURENT P.

Examiner

Uyen T. Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-24 and 27-30 is/are allowed.
- 6) ☒ Claim(s) 25,26,33-36 is/are rejected.
- 7) ☒ Claim(s) 31 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment to claim 25 is acknowledged. However, newly added claim 31 is a clear indication that the claimed lock manager of amended claim 25 is not yet implemented on computer readable medium. Therefore, claim 25 is directed to non-statutory subject matter because the lock manager as claimed is interpreted as software alone. Note also that the claimed "executable in a transaction processing environment" merely describes the capability of that software but no function can be performed unless the software is implemented in a tangible medium readable by a computer.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 25, 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed lock manager broadly interpreted is software alone, not implemented on any computer readable medium capable of realizing the software functionality in a computer system.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 33-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldick (US 2003/0101300).

Regarding claim 33, Goldick discloses all the claimed subject matter (see the whole document). Note the claimed testing bulk locking capability based on conflict relationship, validating the bulk lock based on said testing shown in Figures 3-7.

Regarding claim 34, Goldick discloses "wherein the delegator...cooperating groups" (see Figure 1).

Regarding claim 35, Goldick discloses "wherein said testing...locking capabilities" (see 0087-0090).

Regarding claim 36, Goldick discloses "preventing...said testing" (see 0087-0091).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 25, 26, 31, 32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 27, 28, 33, 34 of copending Application No. 09/992,721. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 27, 28, 33, 34 of copending Application anticipate claims 25, 26, 31, 32 of the present Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

5. Claims 31, 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the double patenting rejection discussed above.

6. Claims 1-24, 27-30 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or make obvious validating bulk delegation of locks by testing the validity of delegating the lock based at least in part on ignore conflicts relationships amongst the delegatee transactions and between the delegatee transactions and otherwise incompatible-mode owners of locks which would remain after completion of the bulk delegation including all the limitations recited in claims 1, 10, 18, 22, 27, 30.

Claims 2-9, 11-17, 19-21, 23, 24, 28, 29 being further limiting and definite are also allowable.

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***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen T. Le whose telephone number is 703-305-4134. The examiner can normally be reached on M-F 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**UYEN LE  
PRIMARY EXAMINER**

30 April 2004